

REMARKS

Claims Status

The claims remaining in consideration are claims 1, 2, 4-7, 9-15, and 17-19. Claims 1, 7, and 15 are the independent claims.

Claims Rejection - 35 U.S.C. §103(a)

Claims 1, 2, 4-7, 9-15, and 17-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,278,898 to Cambray et al. (hereinafter "Cambray et al.") in view of United States Patent No. 5,311,572 to Friedes et al. (hereinafter "Friedes et al.") and United States Patent No. 6,173,052 to Brady (hereinafter "Brady").

There is no suggestion or motivation provided by any of the cited references to support this potpourri or combination of references. Rather, this is an incongruent combination of references, and the references, singularly or in combination, do not suggest, teach, disclose or make the claimed invention obvious. In rejecting claims under 35 U.S.C. §103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. Stratoflex, Inc. v.

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Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). In so doing, the Examiner is required to make the factual determinations set forth by the United States Supreme Court in Graham et al. v. John Deere Co. of Kansas City, 383 U.S. 1, 148 USPQ 459 (1966), and to provide a reason why one having ordinary skill in the art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. The requisite motivation must stem from some teaching, suggestion or inference in the prior art itself as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley, 837 F.2d 1044, 5 USPQ 2d 1434 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins and Refractories, Inc., 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985); and ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984).

It should be recognized that the fact that the prior art could be modified so as to result in the combination defined by the claims at bar would not have made the modification obvious unless the prior art suggests the desirability of the

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modification. In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).

It is submitted that the pending claims are not obvious under the test in Graham et al. v. John Deere Company of Kansas City, 148 USPQ 459 383 U.S. 1, 148 USPQ 459 (1966). "First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP 2142. It is highly unlikely that someone would combine a system for electronically managing calls in a hold queue as disclosed in Cambray et al. with the system for switching between a plurality of databases as disclosed in Friedes et al. and/or with a call processor in a call center for providing agents with the ability to handle multiple types of communications (e.g., inbound calls, outbound calls, facsimiles, e-mail messages, etc.) as disclosed in Brady.

The Examiner cites a potpourri of references that do not work together and then selects certain elements from each of the references and states that when the references are combined, they make the claimed invention obvious. What is obvious is only that which can be deduced by the logical step-by-step reasoning process

furnished by the prior art. The claimed invention is unique and not found in the references and does not come into being in hindsight.

A person skilled in the art would not combine the system disclosed in Brady with the systems disclosed in Cambray et al. or Friedes et al. Brady teaches that the "present invention [Brady's] solves the forgoing deficiencies in the call center environment by 'blending' the various types of communications [e.g., inbound calls, outbound calls, facsimiles, e-mail messages, etc.] that the call center can receive and presenting information related to the various types of communications [e.g., inbound calls, outbound calls, facsimiles, e-mail messages, etc.] that are received to agents." (Col. 1, Lines 55-59). Further, Brady teaches that the "agent can select which 'call' to further process. By blending the various types of communication into a common form for presentation to a call center's agents, the present invention [Brady's] solves the aforementioned deficiencies in the art related to a call center's providing convenience to its customers that may want to use various forms of communications." (Col. 2, Lines 1-7 and also see claims).

The suggestion or motivation to combine the system of blending various forms of communication (e.g., e-mails, facsimiles, etc.) disclosed in Brady with the significantly different system for managing calls in a hold queue disclosed in Cambray et al. is lacking. There is no logical reasoning for combining the system in Brady with the system in Cambray et al. The cited references do not individually or in combination make the claimed invention obvious.

Brady teaches away from the Applicants' claimed invention; hence, the first prong for a *prima facie* case of obviousness is missing.

"Second, there must be a reasonable expectation of success." MPEP 2142. In this case, Brady teaches a system for blending various forms of communication (e.g., e-mails, facsimiles, etc.).

It is not understood how this system could work with the system for managing calls in a hold queue disclosed in Cambray et al. Brady teaches away from the Applicant's claimed invention and Cambray et al. The prior art references fail to provide for a reasonable expectation of success.

Based on these reasons, there is no reasonable expectation of success provided by the combined references; hence, the Applicants

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respectfully submit that the claims are not obvious in light of the cited art. Reconsideration is respectfully requested.

The Examiner is invited to telephone the undersigned, Applicant's Attorney of Record, to facilitate advancement of the present application.

Respectfully submitted,

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